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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOSE R. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

KARLA R. et al.,

Defendants and Appellants.

D053540

(Super. Ct. No. NJ13910)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M.  
Elias, Judge. Affirmed.

Karla R. and Ismael S. (Ismael, Sr.) appeal the dispositional judgment in the  
dependency case of Karla's son Jose R. and Karla and Ismael, Sr.'s, son, Ismael S. Karla  
contends that the juvenile court did not make the findings necessary to deny her  
reunification services as to Ismael, and that there is not substantial evidence to support

any implied finding that Ismael would not benefit from such services. Ismael, Sr., joins in Karla's contentions. We affirm.

## BACKGROUND

On April 11, 2008, three-year-old Jose was taken to a hospital emergency room after Karla reported that he appeared faint and had fallen twice while walking to the bathroom. Hospital medical professionals observed that his entire body—including his face, ears, penis, and scrotum—was covered in bruises too numerous to count. The bruises were in various stages of healing. Jose also had a hematoma on his forehead, multiple burns in various stages of healing, marks on his buttocks, and cuts. A scan revealed a small subdural hemorrhage. A skeletal survey revealed fractures in various stages of healing. The doctor who examined Jose concluded, "This constellation of injuries is only explained by inflicted trauma. This child has suffered multiple episodes of severe and malicious physical abuse at the hands of his caregivers. Returning to an unchanged environment places him at great risk for further harm or even death."

Karla acknowledged that she would hit Jose with a belt every time she became angry or frustrated with him. She admitted pulling his ear, slapping him on the mouth, grabbing him by the hair, throwing him to the floor, and throwing toys, dolls, and a remote control device at him. She admitted hitting him with a belt on the legs, torso, and buttocks, causing bruises on his legs and marks on his buttocks. Karla said that the bruises, hematoma, and a possible arm fracture were caused by falls.. She denied having caused the burns, claiming that they occurred when Jose came into contact with a stove. Karla denied hitting Jose's private parts, face, and head. She explained that when she hit

him with a belt, it wrapped around his private parts, causing marks. Karla said that she punished Jose by forcing him to remain in a corner for an hour with his arms raised.

Karla said that she knew she was wrong to abuse Jose, that she did not know why she did it, and that she did not know how to overcome the underlying problems. When asked why one-year-old Ismael did not have any marks or bruises, Karla said that he did not make her mad. When asked how she would discipline Ismael once he started to talk or rebel, she said that she did not know. She said that she was sad because her children were not with her, but expressed no remorse for her abuse of Jose.

In interviews at the hospital, Jose said that Karla hit him with a belt, that she had caused most of his injuries, and that she would punish him by forcing him to raise his hands in the air and turn around while facing the wall. Jose said that Karla burned him by grabbing his hands and holding them against a stove. Jose reported that his father and an uncle also hit him, and claimed that he was not fed. Jose became very fearful when a social worker asked him to turn around and raise his arms so she could see his back and torso. Jose disclosed that Karla hit Ismael with a belt, Ismael, Sr., hit Ismael with his hand, and Karla and Ismael, Sr., would cover Ismael's mouth.

On April 11, 2008, the police arrested Karla for child abuse. On April 15, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for Jose and Ismael based on Karla's severe physical abuse of Jose (Welf. & Inst. Code, § 300, subds. (e), (j)).<sup>1</sup> In light of the extent of Jose's injuries and the fact that

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

Karla's explanations for those injuries were implausible, the Agency worker believed that one-year-old Ismael was also at risk. Jose was detained in the hospital, and Ismael was detained in a foster home. On April 18, after Jose was released from the hospital, he and Ismael were moved to a new foster home. In June, they were moved to separate foster homes.

On June 12, 2008, the court entered true findings on the petitions. On July 24, it removed Jose and Ismael from Karla's custody and placed Jose in foster care and Ismael with a relative. As to Jose, the court denied Karla reunification services pursuant to section 361.5, subdivision (b)(5) and (6). As explained further below, in Ismael's case, the court ordered services for Ismael, Sr., but denied services to Karla.

## DISCUSSION

### I

#### *There Is Substantial Evidence to Support the Denial of Reunification Services to Karla*

Section 361.5, subdivision (b) provides that "[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence," that the child is subject to dependency jurisdiction "as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent . . . and the court makes a factual finding that it would not benefit the child to pursue reunification services with [that] parent . . . ." (§ 361.5, subd. (b)(6).) "A finding of the infliction of severe physical harm . . . may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or

omission of the parent . . . or any . . . torturous act or omission that would be reasonably understood to cause serious emotional damage." (*Ibid.*) The juvenile court must state on the record the basis for its finding that the parent inflicted severe physical harm and "specify the factual findings used to determine that the provision of reunification services to the offending parent . . . would not benefit the child." (§ 361.5, subd. (i).)

While the record could be clearer, it is evident that as to Ismael, the court denied services to Karla pursuant to section 361.5, subdivision (b)(6). On the first page of the jurisdictional and dispositional report, the Agency recommended that no services be offered to Karla in Ismael's case. In the itemized recommendations at the end of the report, however, there was no such recommendation as to Ismael, although there was such a recommendation as to Jose in item No. 11. At the outset of the dispositional hearing, the Agency's counsel noted the omission and asked that it be added to the itemized recommendations for Ismael. Karla's counsel speculated that Karla was probably going to receive probation and one year of local custody in the criminal case and that Ismael, Sr., was likely to reunify with Ismael. Counsel concluded that Karla would have contact with Ismael once she was released from custody, and that it would

therefore be in Ismael's best interests that she receive services to treat the issues that caused the dependency.<sup>2</sup>

Later in the hearing, the court stated, "As relates to Ismael[,] adopt the recommendations." The court then cited the itemized recommendations but did not specifically mention the issue of services for Karla. The Agency's counsel said, "Your honor, will the denial of services for [Karla] be reflected. Both Ismael and Jose's recommendations [*sic*] I'm asking that it be included in Ismael's recommendation even though we're offering [Ismael, Sr.] services." The court responded, "That's paragraph 11 for Jose." The minute order for the dispositional hearing reflects a denial of services to Karla for Ismael pursuant to section 361.5, subdivision (b)(5) and (6). While section 361.5, subdivision (b)(5) applies only to Jose and not to Ismael, section 361.5, subdivision (b)(6) clearly applies in Ismael's case.

In contravention of the requirements of section 361.5, subdivision (i), the juvenile court did not articulate the basis for its finding that Karla had inflicted severe physical harm on Jose. Nor did the court state the factual findings underlying its determination that offering Karla reunification services would not be in Ismael's best interests.

However, it is clear from the record, as summarized above, that Karla inflicted severe

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<sup>2</sup> Appellate counsel states that if Ismael, Sr., progresses with his case plan and receives services to the 12-month date, Karla will probably be out of jail. Counsel maintains that if she has not received services, this will complicate Ismael, Sr.'s, reunification. We need not address this speculative scenario. Counsel also contends that the portion of Ismael, Sr.'s, case plan prohibiting him from permitting contact between Ismael and Karla violates the court's prior order for supervised visits between Ismael and Karla. We see no violation.

physical harm on Jose. Furthermore, there is abundant evidence in the record supporting the conclusion that offering Karla services would not benefit Ismael. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260-1261.)

" '[O]nce it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]" '[Citation.] The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

If the juvenile court determines that section 361.5, subdivision (b)(6) applies, it "shall not" order reunification services for the offending parent unless it finds, "by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).) "In determining whether reunification services will benefit the child pursuant to [section 361.5, subdivision (b)(6)], the court shall consider any information it deems relevant, including the following factors: (1) [t]he specific act or omission comprising the severe . . . physical harm inflicted on the child or the child's sibling or half sibling[;] (2) [t]he circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling[;] (3) [t]he severity of the emotional trauma suffered by the child or the child's sibling or half sibling[;] (4) [a]ny history of abuse of other children by the offending parent . . . [;] (5) [t]he likelihood that the child may be safely returned to the care of the offending parent . . . within 12 months with no continuing supervision[;

and] (6) [w]hether or not the child desires to be reunified with the offending parent . . . ." (§ 361.5, subd. (h).)

Karla clearly failed to meet her burden to overcome the presumption that she was not entitled to reunification services in Ismael's case. Indeed, she presented no evidence at all that reunification would be in his best interests. Moreover, there is ample evidence to support the implied finding that such services would not benefit Ismael. Karla inflicted horrific and repeated physical abuse and emotional trauma on Jose. Ismael exhibited emotional trauma by such behaviors as throwing himself on the floor and banging his head on the wall. Karla acknowledged having inflicted some of Jose's physical injuries, but gave implausible explanations for others.

There is clearly substantial evidence to support the denial of reunification services to Karla. (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 852-853.)

#### DISPOSITION

Judgment affirmed.

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AARON, J.

WE CONCUR:

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McCONNELL, P. J.

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BENKE, J.